IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4345 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINBHAI HARIBHAI KOLI PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 4345 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS HB PUNANI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/09/2004

ORAL JUDGEMENT

The petitioner has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 19-3-2004 passed by the District Magistrate, Surat and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3 The detaining authority took into consideration three offences registered against the petitioner. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

4. The petitioner has challenged the order of detention on various grounds. Mr. Dave, the learned advocate appearing for the petitioner has argued that the petitioner made a representation on 22-3-2004 and same was received by the detaining authority on 24-3-2004 and the same was rejected by the detaining authority on 25-3-2004 and it was communicated to the petitioner through the jail authorities on 30-3-2004. He has further argued that the State Government has approved the detention order on 24-3-2004 and therefore, the representation was not required to be decided by the District Magistrate and it was required to be forwarded to the State Government, but instead of doing so, the authority-District Magistrate decided the representation which is not legal and for which learned counsel for the petitioner has drawn attention of this Court to decision in the case of Navalshankar Ishwarlal Dave and another v. State of Gujarat, AIR 1994 SC 1496 and submitted that the action on part of the detaining authority was beyond authority, which has affected the right of the detenu of making an effective representation. In any case, the petition, therefore, deserves to be allowed and may be allowed.

5. The detaining authority considered the representation and rejected the same on merits. The detaining authority, in doing so, has exceeded its

authority, as once the detention is approved by the Government, the detaining authority become functus officio and it has no authority to revoke or rescind or modify the order. All that the detaining authority can do is to forward the representation to the Government for appropriate decision. In this regard, the decision in the case of Navalshankar Ishwarlal Dave and another (supra) can profitably be considered.

6. The continued detention of the detenu, therefore, would stand vitiated for the above stated reasons. Mr. Dave, in view of the above observation, has restricted his arguments to the point that the action on part of the detaining authority was beyond authority, which has affected the right of the detenu of making an effective representation.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated 19-3-2004 passed against the detenu is quashed and set aside. The detenu, Pravinbhai Haribhai Koli Patel is ordered to be set at liberty forthwith, if not required in connection with any other case. Rule is made absolute. D.S. permitted.

(R.P.Dholakia, J.)

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